

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1707 of 2000

with

C. A. No.7707 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  
2. To be referred to the Reporter or not? : NO
  
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  
5. Whether it is to be circulated to the Civil Judge? : NO

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NATIONAL INSURANCE CO LTD.

Versus

VIRABHAI PANCHABHAI BORICHA

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Appearance:

MR SUNIL B PARIKH for Petitioner

MR MEHUL S SHAH for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

Date of decision: 25/09/2000

ORAL JUDGEMENT(Per: K.M. Mehta, J.)

Upon joint request the matter is taken up for final hearing.

1. The National Insurance Company Ltd., appellant original respondent No.3 has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgement and award dated 3rd June, 2000 passed by the Motor Accidents Claims Tribunal (Main), Kachchh at Bhuj (hereinafter referred to as "Tribunal"). The Tribunal has been pleased to allow the application being No.326/98 and to pass the judgement and award dated 3rd June, 2000 under the provisions of Section 163A of the Amended Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") and directed the opponents No.2 (owner) and No.3 (Insurance Co.) jointly and severally to deposit with the Tribunal, a sum of Rs.2,32,500/- (Rupees two lacs thirty two thousand five hundred only) with running interest at the rate of 12% per annum from the date of the application till deposit. The Tribunal further ordered that the amount is to be deposited within one month from the date of the order. The impugned order is recorded for temporary compensation in exercise of power under Section 163A of the New Act during the pendency of the MACP No.326 of 1998 by the Motor Accident Claims Tribunal (Main) Kachchh at Bhuj.

2. Since the impugned order tantamounts to only interim compensation during the pendency of the main claim petition, which is required to be adjudicated upon after a full-fledged enquiry and after recording evidence, and the order under challenge is subject to adjustment as per the final judgement and award that may be recorded in the pending main claim petition. We are, therefore, not inclined to interfere with the impugned order. However, it would be expedient to make necessary observation and direction so that the original main claim petition is in any way not intercepted 'en route' leaving the impugned order as final. Learned Advocate, Mr.Mehul S. Shah for the respondents has, rightly, assured that the original claimants shall not withdraw the pending main claim petition. The claimants shall file an undertaking before the Trial Court within four weeks from today stating that they shall pursue the main claim petition to its legal and logical end and they shall obtain a decision and award on merits and they shall not permit the impugned claim petition to be dismissed for default or withdrawn.

2.1 Pursuant to the interim direction, the appellant original opponent-Insurance Company has deposited a

portion of the amount of the interim compensation as per the interim compensation order. The appellant-original opponent No.3 in the main claim petition is directed to deposit the remaining amount due and payable under the impugned order below Exh.6 under Section 163A of the Motor Vehicles Act within a period of two months from today before the Tribunal concerned. The amount of Rs.25,000/deposited before this Court under Section 173 of the Motor Vehicles Act is ordered to be transmitted to the Tribunal concerned by the Registry.

2.3 It will be open for the Tribunal to appropriately make apportionment of the amount of interim award amongst the claimants in light of the celebrated principles of law. The Tribunal is directed to pay 20% of the total deposit lying before the Tribunal by way of an account payee cheque to the respondent Nos. 1 to 3 original claimants, heirs and legal representatives of the deceased Dhanjibhai Virabhai Boricha. The remaining amount i.e. 80% of the total amount that may be deposited or that may further be deposited shall be invested in a nationalised bank for a long period, initially for a period of five years and the amount of interest which shall be due therefrom periodically, shall be payable to the respective claimants. In the event of expiry of the tenure of FDRs before the date of disposal of the main petition, the Tribunal shall extend the period of deposit till the main claim petition is heard and decided. The final award shall be subject to interim order and also it will be the endeavour of the Tribunal to see that the amount of compensation is not being frittered away, the main object of compensation is preserved and protected.

In view of the aforesaid observations and directions, the appeal shall stand disposed of without entering into the merits thereof.

In view of the order passed in the main matter, no orders are passed in the Civil Application.

(J. N. Bhatt, J.)

(K. M. Mehta, J.)

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